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PUBLIC UTILITY DISTRICT NO. 2 OF GRANT
COUNTY, WASHINGTON

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PUBLIC UTILITY DISTRICT NO. 2 OF
GRANT COUNTY, WASHINGTON

Plaintiff.

vs.

PACIFIC GAS AND ELECTRIC COMPANY

Defendant.

Case No. C 07-03243 JSW

Chapter 11 Case

Bankr. Case No. 01-30923 DM

**DECLARATION OF TIM J.
CULBERTSON IN SUPPORT OF
PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY
WASHINGTON'S MOTION FOR
(I) WITHDRAWAL OF REFERENCE
OF PROOF OF CLAIM AND
(II) TRANSFER OF VENUE
THEREOF TO THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
WASHINGTON**

DECLARATION

I, Tim J. Culbertson, do hereby declare,

1. I am the General Manager of Public Utility District No. 2 of Grant County, Washington ("Grant"). I first joined Grant in August 2000 as the Manager of Power Marketing and Operations, and was promoted to General Manager in March 2004. In my capacity as Grant's Manager of Power Marketing from August 2000 to March 2004, I was responsible for all electric energy transactions for Grant, including wholesale electric energy purchases and sales. As part of those responsibilities, I oversaw Grant's wholesale sales of electric energy to the California Independent System Operator Corporation (the "ISO") in November and December 2000, and supervised the individuals who made the sales of electric energy to the ISO during that period. In my current capacity as General Manager, I am responsible for all of Grant's day-to-day operations and its business, generally. I am also responsible for preparing budget and financial forecasts and planning for generation requirements. Finally, I am responsible for interacting with the Grant County Commissioners on issues, policies, and procedures that they set forth as part of their business. I have personal and first-hand knowledge of the facts set forth in this Declaration, and if called and sworn as a witness, I could and would testify competently thereto.

Grant

2. Grant is a consumer-owned utility and a Washington municipal corporation with its headquarters in Ephrata, Washington. All of its offices are located within the State of Washington. Grant has no branches, offices, facilities or other presence of any type in California.

3. Grant owns and operates hydroelectric generation facilities in Washington having a capacity of nearly 2,000 megawatts of electric energy. All Grant's facilities are located in the State of Washington.

4. Grant's primary purpose is to provide electric energy to its consumer owners within Grant County, Washington.

5. From time to time Grant has electricity surplus to the needs of its consumer owners. Grant sells the surplus electricity on a wholesale basis. Virtually all of these wholesale

1 sales are made and delivered within the states of Washington and Oregon due to transmission
2 considerations.

3 6. Grant has no facilities or operations within California.

4 **Grant Was Not A “Market Participant” In The**
5 **ISO And/Or CalPX Wholesale Electric Energy Markets**

6 7. Grant has never submitted any bids to the wholesale electric energy markets
7 operated by the California Independent System Operator Corporation (the “ISO”) and/or the
8 California Power Exchange Corporation (“CalPX”).

9 8. Grant has never entered into any Participating Generator Agreement or Scheduling
10 Coordinator Agreement with the ISO or CalPX, nor has it ever agreed to be bound by the terms of
11 such agreements.

12 **Grant’s Relationship With California**

13 9. Grant has not at any time relevant to the current lawsuit, sold, generated, or
14 transmitted electric power in the State of California, and Grant does not do so currently.

15 10. From time to time, Grant makes sales of wholesale electric energy to various
16 “power marketers” who then resell or distribute the energy to other entities. No Grant
17 representative has traveled to California for the purpose of negotiating wholesale sales to
18 marketers or others, no electricity sale transactions have been negotiated within California, and
19 Grant has made no deliveries of electricity in California. Additionally, Grant has never executed
20 any sales agreements in California nor has it agreed in any sales agreement that Grant would
21 resolve legal matters or disputes in California.

22 **The Grant – ISO Transactions**

23 11. At the height of the California electric energy crisis, during November and
24 December 2000, Grant responded to requests from the ISO to sell specified quantities of electric
25 energy at prices generally offered by the ISO and accepted by Grant. Pursuant to those requests,
26 Grant sold and delivered to ISO in excess of \$18 million worth of wholesale electric energy. All
27 deliveries were made at the Malin substation in Oregon. No deliveries were made in California.
28

1 12. These transactions were bilateral transactions wherein the ISO initially contacted
2 Grant by telephone at Grant's offices in Ephrata, Washington, and requested electric energy on an
3 emergency basis. Negotiations were minimal, with ISO generally stating the price and quantity
4 of electricity they desired to purchase from Grant.

5 13. Grant did not contemplate having the ISO as a regular purchaser at the time of the
6 November and December 2000 transactions, nor at any time thereafter.

7 14. Other than the November and December 2000 transactions, the ISO was not a
8 purchaser of electricity from Grant and has not made any purchases since.

9 15. The oral agreements negotiated between the ISO and Grant for the sale of electric
10 energy in November and December 2000 were confirmed in writing by Grant. Grant has sent the
11 ISO invoices and confirmation documentation specifying the price and quantity for the purchases.

12 16. Attached hereto as Exhibit A is a true and correct copy of invoice number 001211-
13 10 that was sent by Grant to ISO on December 11, 2000 memorializing the ISO's purchase of
14 \$237,500.00 worth of surplus wholesale electric energy from Grant during the month of
15 November 2000.

16 17. Attached hereto as Exhibit B is a true and correct copy of invoice number 010110-
17 09 that was sent by Grant to the ISO on January 10, 2001, memorializing the ISO's purchase of
18 \$18,269,800.00 worth of surplus electric energy from Grant during the month of December 2000.

19 18. Had it not been for the California energy crisis in late 2000, it is likely that Grant
20 would not have entered into the bilateral transactions for the sale of wholesale electric energy
21 with the ISO.

22 19. I have reviewed these matters with the District's power management staff and
23 have verified that at no time during the course of the Grant – ISO transactions did the ISO
24 indicate that Grant's sales of electric energy would be regulated by the FERC or otherwise subject
25 to the tariffs that the ISO files with the FERC in connection with the operation of its spot markets.
26 At no time during the course of these transactions did Grant agree to be bound by the terms of the
27 the ISO tariffs. Grant's individual sales of electric energy to the ISO were short-term, bilateral
28 transactions that were entirely separate from the spot markets operated by the ISO.

